

## REMARKS

These remarks are submitted in response to the Office Action mailed August 20, 2008. Claims 17-33 are pending, of which only claim 17 is independent.

Before addressing the claim rejections set forth in the Office Action individually, it should be noted that, in general, applicant regards claim 17 (and thus dependent claims 18 to 33) of the present application as distinguishable from both of the cited prior art references. In particular, applicant regards neither of the prior art documents as disclosing an anchor which includes a head which is configured for insertion and retention in muscle and/or ligament tissue, which is typically referred to as "soft tissue."

Both of the prior art references disclose bone anchors having a configuration which applicant regards as unsuitable for insertion and retention in muscle and/or ligament tissue. In addition, and in regards to the Goble et al. reference (US 5,702,397) specifically, applicant believes that the Examiner has misunderstood the reference to "soft tissue" at column 1, lines 6 to 9 (upon which the Examiner has relied) as suggesting that the Goble et al. anchor is implanted in soft tissue. The disclosure of Goble et al. is restricted to a **bone anchor** which is implanted in bone, and not soft tissue (and thus not muscle and/or ligament tissue). The disclosure of Colleran et al. is similarly restricted.

Applicant submits that it would be appreciated by a skilled worker in this field that bone has entirely different characteristics than muscle and/or ligament tissue.

Thus, the references to “bone anchor” throughout Goble et al. and Colleran et al. (US 2003/0088250) would not be understood by one of ordinary skill as teaching or suggesting an anchor which is suitable for insertion into (and retention in) muscle and/or ligament tissue.

Turning now to the specific rejections enumerated in the Office Action, the Examiner rejected claims 17-26 and 28 under 35 U.S.C. §102(b) as being anticipated by Goble et al. After having carefully reviewed the Goble et al. reference, applicant submits that each of the claims of the present application includes at least one limitation which is not taught or suggested in Goble et al. Accordingly, applicant submits that Goble et al. cannot anticipate the claims of the present application.

Regarding claims 17-26 and 28, the examiner has cited the Goble et al. reference as teaching a “...tissue anchor intended to be implanted to repair or replace a ligament or other soft tissue in arthroscopic and open soft tissue surgical procedure....”

Applicant submits that, contrary to the Examiner’s assertion, the reference to “open soft tissue” in Goble et al. is not a reference to the configuration or intended use of the anchor. Rather, the reference to “open soft tissue surgical procedure” in Goble et al. is a reference to a type of operative procedure that involves making an incision in soft tissue in order to access an operative site. Indeed, the anchor to which the Examiner has referred does not have a configuration for facilitating insertion into muscle and/or ligament tissue, as recited in claim 17 of the present application. Rather, the anchor used in the Goble et al. is a bone anchor which is

configured for endosteally mounting a replacement ligament (see, column 2, lines 22 to 24). Once endosteally mounted, the bone anchor is then connected "...to an end of a ligament with sutures or shafts... ." In other words, Goble et al. clearly explains that the bone anchor is used to secure an end of ligament tissue to a bone in the course of providing a replacement ligament, as opposed to the anchor being inserted into the ligament itself.

There is no disclosure whatsoever in Goble et al. of an anchor having a configuration for insertion into muscle and/or ligament tissue. In contrast, and as is explained above, in Goble et al. the anchor is attached to a ligament via a suture or shaft. Thus, Goble et al. does not disclose a tissue anchor comprising a head "...having a configuration to facilitate insertion of the head into the tissue and retention of the head in the tissue once inserted... , with the tissue being "...muscle and/or ligament tissue..." (claim 17). There is also no disclosure (or suggestion) that the bone anchor of Goble et al. has a configuration for insertion and retention in anything other than bone.

In view of the foregoing, applicant believes that claim 17 defines patentable subject matter in view of Goble et al. Applicant further believes that claims 18-26 and 28 define additional patentable subject matter, due to their dependence from claim 17.

In the Office Action, the Examiner also rejected claims 17-20 and 23-33 under 35 U.S.C. §102(e) as being anticipated by Colleran et al. Applicant submits that each of the claims of the present application includes at least one limitation which is

not taught or suggested in Colleran et al. Accordingly, applicant submits that Colleran et al. cannot anticipate the claims of the present application.

Regarding claim 17, the Examiner has cited the Colleran et al. reference as teaching "...a tissue anchor... ." However, the anchor to which the Examiner has referred does not have a configuration for facilitating insertion and retention into muscle and/or ligament tissue, as recited in claim 17 of the present application. Instead, the anchor disclosed in Colleran et al. is a bone anchor, and is thus configured to be inserted and retained within bone (see Abstract and page 1, paragraph [0008]).

Colleran et al. fails to teach or suggest an anchor which is configured for insertion into muscle and/or ligament tissue and for retention therein. In contrast, the anchor of Colleran et al. is inserted into a pre-drilled hole (see page 3, paragraph [0055]) in bone. Accordingly, Colleran et al. does not teach or suggest a tissue anchor comprising a head "...to facilitate insertion of the head into the tissue and retention of the head in the tissue once inserted... , with the tissue being "...muscle and/or ligament tissue..." (claim 17).

In view of the foregoing, applicant believes that claim 17 defines patentable subject matter. Applicant further believes that claims 18-20 and 23-33 define additional patentable subject matter, due to their dependence from claim 17.

For all of the foregoing reasons, the outstanding rejections based on anticipation must be withdrawn. It is axiomatic that "[a]nticipation requires the

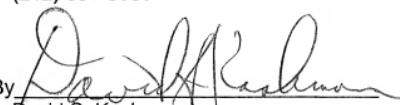
disclosure in a single prior art reference of *each element* of the claim under consideration," *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983) (emphasis added), and that "[t]he identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). In the present case, the cited references do not disclose the identical invention as claimed herein.

Based on the above remarks, favorable reconsideration and allowance of the application is respectfully requested.

The Commissioner is authorized to charge any additional fees that may be required, or to credit any overpayment, to Deposit Account No. 07-1730.

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